

Miami Atty Sees Huge Demand Keeping Hotels On Rebound

By Nathan Hale

Law360 (August 19, 2022, 3:05 PM EDT) -- Few industries during the COVID-19 pandemic experienced as extreme a roller coaster ride as hotels and other hospitality businesses, and while pent-up consumer demand has spurred a strong rebound, unsettled global economics and politics have unleashed a host of new concerns.

Ari M. Tenzer, a founder of the Miami-based law firm TA PLLC, drew upon his nearly two decades of experience advising hospitality clients, including on numerous hotel licensing and management agreements, as he spoke with Law360 recently about the state of the industry, keys to success and issues that attorneys and their hotel clients should scrutinize. This interview has been edited for length and clarity.



Ari M. Tenzer

The COVID-19 pandemic hit the hospitality industry especially hard. Could you refresh our memories about how things were for the sector in 2019 and early 2020, just before the world turned upside down? And how much would you say hotels have rebounded from COVID's impact at this point?

I would say that before COVID, everything in the hospitality industry was firing on all cylinders really. There was a lot of strong demand and very, very solid financial results across all segments. There was a lot of investment. There was a lot of optimism. It's always kind of tied to the economy, so it's cyclical to a certain extent, but there was really unprecedented growth for many, many years.

And then COVID hit, and everybody knows that hotels and cruises and anything that had any kind of public component or anything that was unknown or could potentially be contaminated was all of a sudden taboo and nobody wanted to go anywhere near them.

So, the hotel industry got absolutely clobbered. Partially because there was psychology at play where people just didn't feel safe. And the other side of the coin, I would say, is there were a lot of actual legal and governmental mandates that compounded these situations, because you had mandatory closures and all kinds of restrictions.

Coming out of COVID, I would say things are pretty strong. You have what economists would call pent-up demand, which means that there's a lot of people that have been cooped up for a very long time and

want to travel again and kind of get back to the way things were before the pandemic.

The only thing I would say that's probably been impacted negatively and has not recouped or recovered would be the corporate business segment of hospitality. That's probably still a good bit off from where it was pre-pandemic, but otherwise, especially in the luxury segment, demand has really outpaced supply, and results are very, very strong. Investment is up. Everything looks hunky-dory in the hotel space again.

Just as we're hopefully coming out of the pandemic, people have a lot of other concerns on their minds such as inflation, possible recession, war in Ukraine. How are those issues affecting the industry in terms of consumer demand and development plans?

Good question. Obviously, those kind of macroeconomics concerns will always have some kind of an impact on any market. So I'm not going to sit here and tell you that eventually these kinds of issues won't have a negative impact on the hotel business or on the hospitality industry.

But I'm telling you that, right now, it's just not really happening, and I think a lot of that is a function of how much backlog or pent-up demand there was during the pandemic.

I'm not going to say to you that in nine, 12, 15 months from now, if inflation keeps spiraling out of control and a real recession kicks in, that you're not going to start to see those kinds of macroeconomics factors put a lot of pressure on demand, which then translates into pressure on pricing and pressure on how many room nights hotels are able to sell. It's just like a ripple effect.

But right now, we're not seeing it, and I don't think it's because the macroeconomic concerns are not valid. I just think it's because COVID put so much of a squeeze on everybody's travel plans for so long.

Which destinations or types of hotel properties are doing the best right now?

Leisure is definitely the strongest right now. I would say, within leisure, luxury is just killing it because luxury, by definition, is more of a limited product. They just really can't keep up. We're breaking records in terms of [average daily rates] and other metrics that the development community cares about.

Part of that, again, COVID. The other part is that certain markets are still not really available. So you know, Asia, parts of Europe, we're still not 100% back to regular capacity or supply, so you're seeing a lot more demand for fewer resources.

The Caribbean is just on fire. The U.S. market is really hot now. Certain pockets of Europe are doing very well also. Cruises are back. You know, for a long time, people thought that they wouldn't be.

You mentioned how business-oriented travel and hotels are still struggling. Do you expect to see any properties close in that segment or are they being adapted in certain ways?



Hotels and hospitality businesses have seen a strong rebound after facing challenges due to COVID-19, but unsettled global economics and politics are creating new concerns. (Markus Scholz/picture alliance via Getty Images)

I think that for a long time, people thought that business travel would just die. In part, as a consequence of the pandemic, the way we work really changed on many levels.

So back in the pandemic, there were a lot of people that were seeing these kinds of trends or patterns and saying, "Well, the corporate side of hospitality or tourism is just done because people just won't want to travel for work anymore."

And that's not necessarily the case. They have definitely seen a dip. They're definitely not doing the kind of numbers that they were doing before the pandemic and that they had done historically. But we are seeing interest in building business-oriented hotels, and the rates have also recovered. They're not quite what they were pre-pandemic, but it's not a bloodbath either.

And if anything, it's probably a little limited segment of corporate white collar travelers that may not be going on the entire-companywide trips anymore. But for the most part, business is coming back much quicker and much nicer than I think a lot of people expected in the darkest moment of the pandemic.

You worked recently on deals for RCD Hotels to bring Nobu-branded hotels, residences and restaurants to locations in Punta Cana, Dominican Republic, and Orlando, Florida. Those were two areas that, while popular vacation destinations, hadn't really had a lot of high-end hotels. You mentioned that luxury properties have been doing well. What would you say these deals signal and do you see more difference between the higher-end and the value types of properties in the rebound?

You hit the issue spot on, and I think that given the demand and given the financial performance and the rates that people are seeing in that segment, there's a lot of interest. There's a lot of interest in developing higher-end products and bringing them to these markets that historically were more of a middle-of-the-road offering.

So, yes, we are seeing a lot of transactions in the space. We're seeing a lot of renewed interest, a lot of investment, and it's very encouraging. And, again, the financials kind of support it because there's so much upward pressure on the rates. These luxury properties are at levels that they have never been at before in terms of what they're getting a night for a room, even before the pandemic.

Like the Nobu deal, you've also done licensing deals involving Hard Rock, for example. What's the importance of branding to consumers and what other advantages may those arrangements provide for the hotel owners or the brands themselves?

Typically, if you call me up and say, "I want to be a hotel owner" or "I want to develop a hotel," the first thing I'm going to say to you is, "How much experience do you have?" Because there is a very big difference between being a real estate developer that wants to have some assets in the hotel space and being an actual hotel operator and owner.

So to your question, the license component of it for people that really don't have the expertise or the know-how is critical because you're going to get all of the advice and assistance that you need to know what kind of hotel, what kind of product, what size, the location, the mix of food and beverage, and other amenities for the clients.

That's what you're going to get from the brands if you decide to go that route. If you don't and you don't have the experience, you're just going to be throwing darts in the dark.

And almost more importantly is you're going to get access to their channels, to their membership programs, their reservation systems. That is very, very important for people that don't have the ability or the experience to go off on their own and give it a shot.

If you are an experienced hotel operator or investor-owner, I do see much more frequently people that can forgo the brands and kind of give it a shot on their own. It's not the easiest thing to do, and it has to be the right location, it has to be the right size, etc., etc.

So basically, a Hard Rock or Marriott or Hilton or Hyatt, it's just a space with some rooms that you might be able to rent. But when you put one of those brands on it, it kind of really changes your visibility, your traffic, your financial results.

The downside, obviously, is you've got to pay them fees. But if you're a new build, which we do a lot of, you really either need to know what you're doing based on having a lot of experience, or you just need to go to the brands and have them guide you through how you should go about developing your project.

Which hotel companies are in the best position to weather the current challenges and succeed? Is it better to be bigger, or are there smaller, more nimble outlets that are doing well?

I think across the board right now, the hotel business is back, and if you think back to the darkest or most troubling time of the pandemic, everybody was hurting. I don't care who you were. Didn't matter. Just nobody was staying at hotels and no revenues were being generated, and it was a very, very, very difficult time.

Now, the big guys obviously are capitalizing on all the demand and the ability to fill more rooms. So they have just these huge machines that can kind of shuffle around people to different properties if one property is sold out. And that is a significant competitive advantage especially when demand is outpacing supply.

Smaller guys, they can be doing just as well in terms of how many people want to stay at their hotel. But the problem is, if you only have 10 rooms and those 10 rooms are booked solid for the next 12 months, that's the most revenue you're going to be able to make. So, it's really a function of how much supply flexibility you have, and obviously, the bigger players are going to be in a position that's much more attractive financially just because of how flexible they can be to fulfill exuberant demand.

What are you seeing in terms of hotel companies' development plans? Are they looking to grow now? Is there much in terms of new construction?

There's a lot of focus from the investment community, but to the point you made earlier, the macroeconomic factors are starting to set in. So, demand is strong, rates are high, but everybody's also kind of [got those issues] in the back of their minds as much as everybody wants to pretend like it's not happening.

It's almost like a game of musical chairs. Everyone, in the back of their minds, is watching the interest rates very closely because that means the cost of borrowing money is going to go up, that means development costs are going to go up. So there is some kind of eventual — I don't want to use the word "slowdown" or "correction" on the horizon — but I do think that the macroeconomics will eventually catch up with these above-average or unusually high levels of demand and level things out.

I don't think it's going to be a crash where nobody's going to want to build a hotel in the next 10 years. Stabilization is probably more [the word that] I would use.

We hear a lot about ESG principles in real estate and investing. How important are these types of issues for hotel brands, and what do you see them doing in this respect?

I think it's very important. I think a lot of people are focusing on it. But at the end of the day, it's not like it's really diverting a lot of money or having a significant impact on the bottom line.

It's almost like another amenity, and it's the right thing to do, and it's good that people do pay attention to it and that the market and the consumers are kind of forcing the hoteliers' or the brands' hands to pay attention to it.

But it's not like overnight there's been this huge shift to ... just completely revamp the hotel to have solar panels and batteries instead of traditional energy. That's not really happening.

What are some other issues that you find yourself counseling clients on or that you think attorneys need to keep in mind while advising hospitality clients on development deals and business plans?

The hotel industry got caught with its pants down during the pandemic because nobody had ever focused on force majeure provisions in the agreements the way that everybody looked at them during the pandemic and has been looking at them since. Force majeure is basically a legal concept where it's an excusable defense or guards performance to the extent that something arises that's beyond the control of the parties.

Now, that whole concept is being litigated as we speak. And it was a huge, huge, huge issue during the pandemic, because you had situations where, again, governments were mandating shutdowns, owners did not want to continue footing the bills for keeping hotels open when nobody was coming to them, and brands didn't always necessarily agree with decisions that owners were making to either significantly reduce their headcount and labor force or to shut down the hotel entirely.

The force majeure provisions or definitions in documents that have anything to do with the hospitality industry are more important than ever. And in most cases, those definitions pre-pandemic didn't really do a good job of addressing what ended up unfolding.

I know you've done work and been based in some overseas markets during your career. Any more thoughts on how the hotel business and development compares domestically with internationally right now?

As a whole, the hospitality business has rebounded, but there are still certain segments or pockets where either because of cultural and social reasons, or because of government and legal reasons, things haven't quite come back to normal or to pre-pandemic levels.

Asia is a good example. If the government is still being very restrictive and mask mandates are around and people just don't want to go to your country and deal with any kind of testing or quarantining requirements you may have, you're not going to be seeing a lot of investment dollars heading in those directions.

But you come to a place like the Caribbean or you come to a place like the United States and certain

western parts of Europe where for the most part all COVID restrictions or inconveniences have been lifted either significantly or entirely, and you're going to see a lot more activity and interest.

And what kind of impact have short-term rentals such as Airbnb and Vrbo had on the hotel industry through all of this?

That's another question that we spent a lot of time many years ago going back and forth on, the experts in the industry, when Airbnb first came out and the Vrbos and similar services.

There was a lot of concern that they would be essentially eliminating or stealing hospitality market share, kind of taking away from the traditional brick-and-mortar branded products, where people would either be going to an Airbnb or they'd be going to a Marriott.

And by and large, I think the consensus is that just didn't prove to be the case. The market proved to be resilient enough and elastic enough to really have enough space and demand for both kind of products to coexist and live side by side. I think, if anything, if you want to put them in the same group, the market just grew.

Did the pandemic produce any sort of change in terms of how many people used those products?

Well, that's another interesting question. Logic would dictate that if you're somebody that's scared of catching COVID, you're probably more likely to confide in a big brand like Marriott that have their ducks in a row in terms of making sure that things are cleaned properly than you would be some mom-and-pop shop that just has a bunch of Airbnbs under their umbrella. But again, I'm not aware of any significant fluctuations or declines in terms of demands for that kind of room-sharing market or whatever you want to call it.

So what would you say your outlook is for the hotel industry in the second half of this year? What are some key factors you're going to be watching?

I would say cautiously optimistic. I think there's eventually going to be a little bit of a cooling off, again because of the macro factors. If the macro factors weren't what they were now with the war, inflation, you'd just be in a bull market.

I mean, there'd just be things flying all over the place and the hotel lawyers wouldn't be able to keep up with all the transactions that came across their desks. We kind of are a little bit slower than we were just right out of the gates from the pandemic right at the end, but we're still pretty, pretty busy.

But I do think that eventually there's going to be a leveling off. I don't think there's going to be a crash or a significant decline — unless COVID comes back. So we don't know. If a [virulent] variant of COVID comes back, all bets are off. But assuming that we're kind of past COVID for the most part, and we're just dealing with macroeconomic issues, I think the industry is going to be fine.

What is it like for you and your colleagues being a lawyer covering this industry right now?

Intense. That's the best way to describe it. A lot of interest, a lot of deals, a lot of opportunity.

Are there certain steps that hospitality companies should be taking to prepare themselves for future crises?

I guess there's really two components to my answer: legal and operational.

On the operational side, I think that the industry learned a lot. I think they really got their backsides handed to them. Again, it wasn't their fault, but I just don't think that they'd ever experienced this kind of systemic shock. So I think from an operations perspective, a lot of what COVID taught them is here to stay in terms of hygiene, cleanliness, disinfecting, staff safety requirements, all that good stuff.

From a legal perspective, the force majeure clause is a big one. Something else that I think a lot of people in the hotel industry are going to be looking at a lot more carefully for the future is their insurance coverage — the levels, the types of insurance that they carry. Do you have business interruption? Does your business interruption policy have an exclusion for a pandemic?

You can go around and around in circles, but I think those are the two things that really came out of the pandemic in terms of things that hotel owners are going to spend a lot more time worrying about and looking at before doing new deals or even retrospectively looking at with deals that were done and properties that are operational.

There's going to be a lot of housekeeping on insurance and a lot of the contractual obligations as they relate to force majeure and pandemics and government-mandated closures. It is all going to be looked at very carefully.

--Editing by Orlando Lorenzo.